

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS

JEREMY DAVID,	)	
	)	
Plaintiff,	)	
	)	No. 3:12-CV-00869-JPG-SCW
vs.	)	
	)	JURY TRIAL DEMANDED
DIERBERGS MARKETS, INC.	)	
	)	
Defendant.	)	

**NOTICE OF REMOVAL**

COMES NOW Defendant Dierbergs Markets, Inc., by and through the undersigned counsel, and pursuant to 28 U.S.C. §1446, respectfully represents to the Court as follows:

1. This case involves a claim by Plaintiff against Defendant Dierbergs Markets, Inc. (hereinafter "Dierbergs"), arising out of a fall that allegedly occurred at grocery store operated by Dierbergs in St. Louis County Missouri. See Plaintiff's Complaint attached hereto as Exhibit A.

2. This case has a complicated procedural history. Originally, this case was filed in the Circuit Court of Cook County on August 4, 2011. See Cook County Docket Sheet attached hereto as Exhibit B. Dierbergs was served on December 1, 2011. See Dierbergs's Responsive Pleadings attached hereto as Exhibit C. Without Dierbergs's knowledge, the case was dismissed for want of prosecution on December 6, 2011. See Exhibit B. On December 30, 2011, Dierbergs filed a timely Answer, Jury Demand, and Motion to Transfer Venue. See Exhibit C. On January 11, 2012, again without Dierbergs's knowledge, Plaintiff had his case reinstated. See Exhibit B. On March 7, 2012, the case was again dismissed for want of prosecution. See Exhibit B. On April 4, 2012, Plaintiff reinstated his case without informing Dierbergs. Exhibit B. On May 24, 2012, the case was ordered transferred by consent to Madison County. See

Transfer Order attached hereto as Exhibit D. On May 30, 2012, Dierbergs served Plaintiff with initial written discovery which has gone unanswered. See Dierbergs's Initial Written Discovery attached hereto as Exhibit E. On June 20, 2012, the case was officially opened in Madison County following the order transferring it. See Order Assigning Judge attached hereto as Exhibit F. The case is currently pending in the Circuit Court of Madison County under cause number 2012-L-000866 and styled Jeremy David v. Dierbergs Markets, Inc. See Exhibit F. On June 28, 2012, Dierbergs served its Requests for Admission on Plaintiff. See Dierbergs's Requests for Admission attached hereto as Exhibit G. Plaintiff to date has not responded to the Requests for Admission.

3. Under Illinois Supreme Court Rule 218, Plaintiff had 28 days within which to respond to the Requests for Admission. If Plaintiff fails to respond, the statements are admitted for the purposes of the litigation. Because Plaintiff's time has elapsed, Plaintiff has admitted the following:

- a. In this case, [his] claim for damages exceeds the sum or value of \$75,000.00, exclusive of interest and costs;
- b. Plaintiff Jeremy David is a citizen of the State of Illinois; and
- c. Defendant Dierbergs Markets, Inc. is a citizen of the State of Missouri.

See Exhibit G.

4. Plaintiff also admitted that he was a citizen of the State of Illinois in his Complaint. See Exhibit A.

5. Dierbergs's status as a citizen of the State of Missouri is further supported by the Affidavit of Steve Radcliff that was attached to the Motion to Transfer Venue. See Exhibit C.

6. Consequently, jurisdiction exists in this court under 28 U.S.C. § 1332 because there is diversity of citizenship and because the amount in controversy exceeds \$75,000.00.

7. Prior to these admissions in Exhibit G, Dierbergs had no knowledge of the amount Plaintiff intended to claim as a result of his alleged injuries other than that Plaintiff claimed more than \$30,000 in damages in his Complaint.

8. Pursuant to 28 U.S.C. §1446, Dierbergs may remove this case to the United States District Court for the Southern District of Illinois because the notice of removal has been filed within 30 days of learning that this cause may be removable and within 1 year of the initial filing.

**WHEREFORE**, Defendant Dierbergs Markets, Inc. respectfully requests an Order of this Court causing the above-described Cause Number 2012-L-000866 of the Circuit Court of Madison County, State of Illinois, styled *Jeremy David v. Dierbergs Markets, Inc.* be removed to this Court for further proceedings and that this Court take jurisdiction herein and make further orders as may be necessary and proper.

Respectfully submitted,

RYNEARSON, SUESS,  
SCHNURBUSCH & CHAMPION, L.L.C.

BY: /s/ Debbie S. Champion  
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**Certificate of Mailing**

A true copy of the foregoing was mailed on this 21st day of September, 2012 by U.S. First Class Mail, postage prepaid, to:

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/s/ Debbie S. Champion